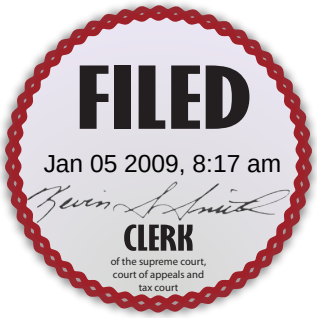

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IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Paternity of L.M.R and C.B.R..,	)	
	)	
S.R.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 28A04-0808-JV-500
	)	
	)	
B.R.	)	
Appellee.	)	

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-0202-JP-9 and 28C01-9703-JP-38

January 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

In this consolidated appeal, S.R. (Appellant) appeals the trial court's orders reducing his payments on his child support arrearages from $30 per week to $20 per week in each of two separate causes. Appellant presents one issue for our review: did the trial court abuse its discretion in setting the amount Appellant was to pay on his child support arrearages?

We affirm.

Appellant and B.R. (Mother) had two children together, C.B.R., born December 24, 1996, and L.M.R., born August 16, 2001. Appellant's paternity was established by court order in separate paternity actions following each of the children's births. In each case, Appellant was ordered to pay child support. The children were eventually adopted by their step-father on October 11, 2006, and thus Appellant's child support obligation ceased as of that date. Since the adoption, however, Appellant has been under an order to pay on the child support arrearage he had accumulated for each child prior to their adoption.

As of October 11, 2006, Appellant owed an arrearage to C.B.R. in the amount of $8,682.92. On January 30, 2007, the trial court ordered Appellant to pay $30 per week toward the remaining arrearage. In its order, the court acknowledged Appellant was unemployed and ordered him to submit a monthly list of no fewer than twelve job applications to the child support office. By May 31, 2008, Appellant had reduced the arrearage owed to C.B.R. to $5,210.22. In total, Appellant reduced the arrearage by $3,472.70 with an average payment of just over $40 per week over the eighty-six-week period.

As of January 31, 2007, Appellant owed an arrearage to L.M.R. in the amount of $5,405.79. On February 6, 2007, the trial court ordered Appellant to pay $30 per week

toward the balance of the arrearage. The court imposed the same reporting requirement with respect to monthly job applications that the court imposed in C.B.R.'s paternity action. By May 31, 2008, Appellant had reduced this arrearage to $2,248.69, a difference of $3,157.10. Paid over a seventy-week period, this reduction represents an average payment of $45 per week.

On May 22, 2008, Appellant filed in each of the paternity cases a petition to reduce his arrearage payment. In each petition, Appellant alleged that he "is not able to meet his basic needs at the level of the current withholding." *Appellee's Appendix* at 1, 2. The trial court held a hearing on Appellant's petitions on June 30, 2008.

At the June 30 hearing, Appellant testified that he was unemployed and that he had no permanent place to live. He further testified that he had three broken vertebras, a lesion on his brain, and was disabled. Evidence submitted at the hearing showed that Appellant qualifies for $647.40 per month in disability payments from the Social Security Administration (SSA). After $260 is deducted for payments on his child support arrearages to C.B.R. and L.M.R.[1] and $96.40 is deducted for his Medicare Part B premium, Appellant receives a check for $291 from the SSA. Appellant explained his monthly expenditures as follows: $50 per month to friends who let him stay with them; $80 per month for food; $30-$40 per month for a cell phone that he maintains is necessary to call friends for rides and to schedule appointments; $60-$100 per month for gas to go places and to see his third child

[1] The $260 deduction was based on the then-standing orders that Appellant pay $30 per week per child toward his child support arrearages.

who was born prematurely in April 2008; $6-$12 per month for prescriptions; and $20 per month for miscellaneous personal items. Appellant also testified that he would spend money on tobacco if he had it, but claimed he was going to quit smoking. Over a six-month period, Appellant testified he was able to save $400 by not eating or smoking, but that he used the money for expenses related to the birth of his third child rather than to get a place to live. Appellant requested that his arrearage payments be reduced to $25 per month per child.

Following the June 30 hearing, the court issued an Order Reducing Arrearage Payment in both cases whereby the court reduced Appellant's weekly payment toward his child support arrearage to $20 per week per child.[2] In arriving at this amount, the court explained that it "calculated a guideline child support worksheet based upon [Appellant's] SSD [social security disability] income and imputing minimum wage to the mother, and the worksheet resulted in just over $40.00 per week for two children. Dividing the guideline support amount equally for each child results in the Court's order for the weekly arrearage payment." *Appellant's Appendix* at 6, 17. On July 7, 2008, Appellant filed a motion to correct error in both cases. In each order denying Appellant's motions to correct error, the trial court explained that it used the child support worksheet "merely for the purpose of using an objective basis in determining a reasonable sum to be paid on the [Appellant's] child support arrearage." *Id*. at 5, 16. The cases were consolidated for purposes of the instant appeal.

[2] At $20 per week, it will take just over five years for the arrearage owed to C.B.R. to be paid in full and over two years for the arrearage owed to L.M.R. to be paid in full.

Appellant argues that the trial court erred in setting his weekly arrearage payment at $20 per week per child because paying such amount deprives him of the ability to support himself at a subsistence level. We will reverse a trial court's decision in child support matters only for an abuse of discretion. *See In re the Paternity of G.R.G.*, 829 N.E.2d 114 (Ind. Ct. App. 2005) (trial court did not abuse its discretion in ordering father to pay additional weekly support until he extinguished arrearage that accumulated after mother filed her petition).

It is undisputed that Appellant qualifies for $647.40 a month from the SSA for disability. Under the prior arrearage order, after deductions were made to pay Appellant's obligation for his child support arrearage and his insurance premium, Appellant actually received a check for $291 per month from the SSA. With the trial court's current reduction of Appellant's child support arrearage payment to $20 per week per child, Appellant will receive approximately $377 per month from the SSA. We agree that this is a meager amount on which to live and further agree that if this were the entire story, we would be inclined to accept Appellant's argument that the amount he was ordered to pay on his support arrearage deprived him of the ability to support himself at a subsistence level. This, however, is not the entire story.

We note that in 2007, the trial court reduced his obligation to $30 per week per child based on his claim that he was unemployed. At that time, the court also indicated that it believed Appellant was capable of working in that the court ordered Appellant to submit at least twelve job applications per month to the child support office. At the June 30, 2008

hearing, Appellant was asked if he had complied with the trial court's orders that he seek employment and provide monthly verification of his job hunting activities, and he responded that he was unable to work, that he did not have a driver's license, and that he had been looking for a place to live to take care of his new baby. Mother countered that Appellant had worked in a factory "since [his] accidents" and that he had turned down an offer for "free college." *Transcript* at 15. Appellant replied that he did not remember the college offer and that he did not think he was smart enough for college. Appellant acknowledged his employment at the factory, but explained that it had closed down. Appellant acknowledged that he had worked at a factory, but interjected that it had "closed down." *Id*.

The trial court apparently credited Mother's testimony and found that Appellant was making excuses for his failure to try to find a job and that his claim that he was unable to work was self-serving. The trial court obviously believed that Appellant need not rely on his disability income. To be sure, other than Appellant's self-serving statements, there is nothing in the record that demonstrates that he could not work and earn additional money to supplement his disability income.[3]

Appellant also argues that the trial court erred in relying upon the child support guideline worksheet in setting the amount he was to pay on his child support arrearages. Appellant notes that the child support guidelines use an income shares model to "apportion the cost of supporting children between the parents according to their means." *McGill v.*

[3] We recognize that people who receive disability benefits may earn only a limited amount of income without losing their benefits. Appellant does not argue SSA rules prevent him from earning enough income to pay $40 per week toward his arrearage; the issues he raises focus on the trial court's use of the child support worksheet to determine the amount of his weekly payment.

McGill, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). The goal of the child support guidelines is to mirror the financial contribution both parents would have made and the standard of living the children would have enjoyed if the family unit had remained intact. *Payton v. Payton*, 847 N.E.2d 251 (Ind. Ct. App. 2006); Ind. Child Support Guideline 1. Appellant maintains that those goals do not exist "when the court is no longer seeking to split the ongoing needs of the family between two parents and is instead examining one parent's obligation to reimburse the custodial parent for a support arrearage . . . ." *Appellant's Brief* at 8. Appellant asserts that the issue is no longer apportioning costs of child rearing, but rather it is demanding that a debt be paid.

Appellant is correct in that the goal of apportioning costs between parents is not at issue in determining an amount to be paid on an arrearage. The goal of maintaining a standard of living for the children, however, is still implicated. Here, rather than pulling a number out of thin air, the trial court turned to the child support guideline worksheet as "an objective basis in determining a reasonable sum to be paid on the [Appellant's] child support arrearage." *Appellant's Appendix* at 5, 16. The trial court did not abuse its discretion in doing so.

Indeed, there is nothing in the guidelines that purports to limit their application to only determinations of current support obligations. Even in a case where there is no need for a current support order, as is the case here because the children have been adopted by their step-father, the amount calculated under the guidelines would seem to be an appropriate, objective place to start in determining a proper amount to be paid toward a child support

arrearage because ability to pay is factored into the calculation. As is the case with the amount determined by the child support guidelines for the payment of child support, in the case of setting payment on an arrearage, the court should not blindly adhere to the computation, but rather should give "careful consideration to the variables that require flexible application of the guidelines in order to do justice." *McGill v. McGill*, 801 N.E.2d at 1253. Thus, a trial court may adjust upward or downward the amount determined by the guidelines upon a consideration of the circumstances.

We reject Appellant's position that the trial court blindly adhered to the amount calculated by the child support guideline worksheet in determining the amount Appellant was to pay per week per child on his child support arrearages. As noted above, it is apparent the trial court found that Appellant could work and that he was simply making excuses for his failure to try and find a job to supplement his disability benefits (while of course, adhering to the rules of SSA). Indeed, the trial court may have concluded that the money to be diverted to Appellant's pocket by reducing his payment on his support arrearages to his requested nominal payment of $25 per month per child (that is, approximately $120) could be earned with minimal effort. The trial may also have believed that additional funds in Appellant's wallet would not be used as Appellant claimed, that is, to get a place to live and to care for his third child. Thus, the trial court could very well have decided to put the money in the hands of C.B.R. and L.M.R. rather than permit Appellant to squander it away. Giving due deference to the trial court, we conclude that the trial court did not abuse its discretion in looking to the child support guidelines to determine an appropriate amount for Appellant to

pay toward his child support arrearage and that the trial court did not abuse its discretion in setting the amount at $20 per week per child.

Judgment affirmed.

MAY, J., and BRADFORD, J., concur